

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4297 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JANAKRAI G VYAS

Versus

ABAD DAIRY

Appearance:

MR RK MISHRA for Petitioner
MR DG CHAUHAN for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/12/96

ORAL JUDGEMENT

The petitioner challenges the advertisement dated 6.7.1985, a copy of which is at annexure "A" to the petition, by which the respondent Abad Dairy had invited applications for one post of Garage Supervisor for the Dairy. The petitioner's case is that in view of the award of the Industrial Tribunal in Reference (IT) No.102/73, a copy of which is at Annexure "D" to the petition, appointment to the said post could not have

been made by direct recruitment as the post is meant for the promotees as per the award.

The learned Counsel appearing for the petitioner strongly contended that in the award of the Tribunal dated 22nd September, 1975 it was in terms directed that the vacancy should be filled in on the principle of seniority-cum-merit from the cadre of the Section concerned and it is only in extreme cases of no suitable employee in the Corporation being available for the post which has fallen vacant, that the post can be filled in by inviting applications from the members of the Corporation in other Departments or by advertising the post for direct recruitment. It was submitted that the petitioner was an experienced hand and he had also practical qualifications in automobile engineering and he was therefore a fit person available for promotion to the post of Garage Supervisor.

In the affidavit-in-reply it has been stated by the respondents that the said award was in respect of the employees working in General and Administrative cadres of the Municipal Corporation and it does not cover the specialised/technical post like the post of Garage Supervisor. It is stated that the petitioner does not possess the requisite qualifications for the said post and therefore, his claim for promotion cannot be entertained. It is stated that no employee of the Abad Dairy was qualified for the said post.

For the post of Garage Supervisor, the qualification required were Diploma in Automobile Engineering/DME, experience of minimum five years in a large transport organisation and thorough knowledge of maintenance of Heavy and Light Duty vehicles, as stated in the advertisement at Annexure "A" to the petition. The petitioner admittedly did not possess these qualifications because, as can be seen from his letter at Annexure "E" dated 17.6.1985 addressed to the General Manager of the Dairy, his educational qualification is only S.S.C with English and G.I.T.W Course of practical and theoretical training in automobiles. It is therefore, clear that the petitioner was not eligible for the said post. The award on which reliance is placed does not direct that a person not eligible or qualified should be promoted.

It is thus, clear that the petitioner did not possess the necessary qualification for the post in

question. He therefore, cannot claim any promotional right to that post. Under these circumstances, the petitioner has failed to make out any case for interference by this Court against the direct recruitment to the said post. The petition is therefore, rejected. Rule is discharged with no order as to costs.
